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## Appeal Decision

Site visit made on 14 January 2020

**by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 March 2020**

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**Appeal Ref: APP/J0405/W/19/3239409**

**20 High Street, Wendover, Buckinghamshire HP22 6EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Simon Dennis (Barbara (Aylesbury) Ltd) against the decision of Aylesbury Vale District Council.
  - The application Ref 18/03244/APP, dated 13 September 2018, was refused by notice dated 25 June 2019.
  - The development proposed is for "the retention of flue and cowl".
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### Decision

1. The appeal is allowed and planning permission is granted for the flue and cowl at 20 High Street, Wendover, Buckinghamshire HP22 6EA, in accordance with the terms of the application, Ref 18/03244/APP, dated 13 September 2018, subject to the condition set out in the attached Schedule.

### Procedural Matters

2. I have taken the reference to the proposal being a 'retention' of the flue and cowl out of my decision, as this is not required to describe the development. However, I do acknowledge that the flue and cowl is in place and in operation also.
3. It is my understanding that the corresponding Listed Building Consent application for the flue and cowl was granted permission on 10 June 2019. This appeal only relates to the planning application which was refused permission by the Council.

### Main Issue

4. The main issue is the effect of the development on neighbour living conditions, particularly due to odour and noise.

### Reasons

5. No 20 High Street (Lucca Restaurant) is a Grade II listed building positioned centrally in Wendover (also within the Wendover Conservation Area), in an area which has a mix of uses, such as retail, residential and 'food and drink' type uses also. No 20 adjoins the dwelling of No 24 High Street to the west which is the nearest neighbour to the site.
6. To the rear of No 20 High Street there is a metal flue attached to the roof of a projecting single storey rear section of the building, which houses the

restaurant kitchen. At my site visit the kitchen was in use and I heard the noise of the flue extraction system. Whilst it was certainly audible from the surrounding area, it did not sound loud enough, in my opinion, to result in a significant loss of amenity to neighbours to the site, including the occupant of No 24. This is especially due to the traffic noise along the High Street and Back Street, which produced a significant amount of background noise.

7. In this regard I note the response from the Council's Environmental Health (EH) Officer. They stated that the noise from the flue system should not exceed 67.0 dB which they consider would not result in a noise nuisance. The Council has recommended a condition that the noise would not exceed 67.0 dB if the appeal is allowed, which reflects the EH Officer comments. It is also clear from the evidence that from within No 24 the noise level would be audible, but at this level would not have a significant adverse effect and therefore no further mitigation would be required.
8. Therefore, whilst at 67 dB the noise from the extraction system would be audible within the garden and parts of the neighbour's cottage at No 24, I do not regard this level of noise as being intrusive or resulting in harmful impacts to the neighbour's living conditions, especially when considering the location of these properties within central Wendover with associated background noise levels which would likely last for much of the day.
9. In terms of odour, at the time of my site visit there was no distinct odour from the flue, but I recognise that this may not always be the case. As the flue and extraction system serves a restaurant kitchen then there is likely to be some odours from this source at times. However, from the information before me, the Environmental Health team have visited No 24 and did not consider odour as having a significant adverse impact. When there was a detectable odour it was infrequent and only for a limited length of time at this neighbour's property.
10. The neighbour at No 24 has submitted representations which include reference to a 2005 Defra guide 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems'. This included a methodology for the assessment of odour and the potential harm to amenity. Whilst I have considered this document, the results that have been arrived at by the neighbour are not wholly based on exact measurements or facts and there are some assumptions. I also note that this document has been withdrawn.
11. Nonetheless, I would certainly expect for there to be some level of odour at times from what is a restaurant kitchen at close proximity to the neighbour's house, but considering all the evidence the odour emanating from the flue does not result in significant adverse effects to the living conditions of the occupiers at No 24 or any other neighbour.
12. Considering the context of the area, which is in the centre of the village adjacent to the busy High Street and has a range of other commercial uses, noise and odours would not be untypical to some extent. In this case, the noise and odour that emanates from the flue and the extraction system is not such that it results in significant levels of disturbance or have an intrusively harmful impact to neighbours to the restaurant, including the occupiers of the adjoining No 24 High Street. This is based on the current height of the flue as installed, with the cowl in place, and therefore I see no need for this equipment to be higher or different in any way to safeguard neighbour amenities.

13. Overall, considering what I observed at my site visit and also the evidence before me, I would regard that the flue and cowl does not have a harmful impact to neighbour living conditions, for the occupiers of No 24 High Street or any other neighbour to the site. There is no substantive evidence that demonstrates to the contrary. Furthermore, I understand that if the situation changes and there are more odours from the flue then this could potentially be addressed through other legislation.
14. As such, the flue and cowl are in accordance with policies GP.8 and GP.95 of the Aylesbury Vale District Local Plan, which seek to, amongst other things, protect the amenities of nearby residents.

### **Other Matters**

15. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is relevant to this appeal as it requires special regard as to whether to grant planning permission for development which affects a listed building or its setting. Also, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas in the exercise of planning functions.
16. There have been comments received regarding the appearance of the flue, which is visible from Back Street to the rear of the site. However, it is my view that this is a feature of a modest size and is not visually prominent. It is also clearly at the rear of a building and I am also aware that it replaced other flues that projected previously from this roof. Overall, I consider that the flue and cowl preserve the significance of the Conservation Area and listed buildings in the area.
17. Comments received at the time of the planning application about CCTV, air conditioning units and floodlights at the restaurant are separate to my considerations as part of this appeal based on the proposed development.

### **Conditions**

18. I have considered the condition put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the National Planning Policy Framework. As the development has been completed it is not possible or necessary to impose a three year time limit for the development to be started or to have a condition requiring it to be carried out in accordance with the approved plans.
19. I have included a condition, as recommended by the Council, for the noise level of the flue system to be capped at 67.0 dB, which from the evidence provided is considered to be reasonable. I also note the appellant has agreed with this condition when originally recommended to the Planning Committee.

### **Conclusion**

20. For the reasons given above, the appeal is allowed subject to the condition below.

*S. Rennie*

INSPECTOR

**Schedule – Condition**

1. The sound level from the kitchen extraction flue as measured 1.2m above the ground in the rear courtyard and within a 2m radius from the extractor flue as it exits the kitchen must not exceed 67.0 dB LAeq (5 mins).